## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

SHELBY PATTERSON, et al.,	)	
Plaintiffs,	)	
VS.	)	Case No. 4:22-cv-1392-MTS
BANK OF AMERICA N.A., et al.,	)	
Defendants.	)	

## MEMORANDUM AND ORDER

Before the Court is Plaintiffs' Third Amended Complaint. Doc. [42]. Under Federal Rule of Civil Procedure 15(a)(2), a party may file an amended pleading "only with the opposing party's written consent or the court's leave." Plaintiffs have not filed a motion seeking the Court's permission to file the Third Amended Complaint nor is the Court aware that the opposing parties here, Defendants Bank of America N.A. and Rushmore Loan Management Services, LLC, have provided written consent for Plaintiffs to file the Third Amended Complaint. Therefore, Plaintiffs filed the Third Amended Complaint without seeking leave of court or the consent of Defendants in violation of Federal Rule of Civil Procedure 15(a)(2).

The Court notes this is Plaintiffs' second time improperly filing an amended complaint. Previously, Plaintiffs filed a Second Amended Complaint, Doc. [11], without leave of Court or consent of Defendants, and the Court struck the Second Amended Complaint from the record, Doc. [12] ("IT IS HEREBY ORDERED that Plaintiffs' Second Amended Complaint, Doc. [11], is STRICKEN from the record. *See* Fed. R. Civ. P. 15(a).").

<sup>&</sup>lt;sup>1</sup> Plaintiffs do not have the option to file their Third Amended Complaint as a "matter of course." *See* Fed. R. Civ. P. 15(a)(1).

Because the Court previously struck the Second Amended Complaint, *see* Doc. [12], and because Plaintiffs improperly filed their Third Amended Complaint, as discussed in this Memorandum and Order, the controlling complaint in this action is the "Amended Complaint," filed on April 12, 2023, *see* Doc. [5]. If Plaintiffs seek the Third Amended Complaint to be the controlling complaint in this action, Plaintiffs shall file an appropriate motion to file the Third Amended Complaint, in compliance with Federal Rule of Civil Procedure 15(a)(2) and this Memorandum and Order. The Court will allow Plaintiffs seven (7) days to file such motion.

IT IS HEREBY ORDERED that Plaintiffs shall, by <u>August 23, 2023</u>, file an appropriate motion with the Court seeking to file the Third Amended Complaint. *See* Federal Rule of Civil Procedure 15(a)(2). Failure to comply with this Order shall result in the Court striking the Third Amended Complaint from the record.

Dated this 16th day of August, 2023.

MATTHEW T. SCHELP

UNITED STATES DISTRICT JUDGE